

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHER PETER OLSON, JOSEPH DANIEL COENEN,
MARY JO MEYER, PAUL JOSEPH DATTA, ERIC DONALD JOHNSON,
SARAH JANE MARIE FREIBURGER, JEROME STEVEN, HEATHER SCHENCK
and ROBERT EUGENE VOGT

Appeal No. 2005-2330
Application No. 10/026,123

ON BRIEF



Before KIMLIN, PAK and OWENS, *Administrative Patent Judges*.

PAK, *Administrative Patent Judge*.

ON REQUEST ON REHEARING

Appellants request a rehearing of the Board's decision entered March 1, 2006 (hereinafter referred to as "our decision"), wherein we affirm the examiner's decision rejecting claims 1 through 23 under 35 U.S.C. § 103.

We have carefully considered the arguments raised by the appellants in the Request for Rehearing dated April 28, 2006

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(hereinafter referred to as "the Request for Rehearing").

However, they do not persuade us that our decision was in error in any respect.

As is apparent from the Request for Rehearing, the appellants do not challenge our finding that Schmitz teaches and/or would have suggested the subject matter recited in the separately argued claims on appeal.¹ Compare our decision, pages 6-10, with the Request for Rehearing, pages 1-3. Nor do the appellants request that our decision be denominated as including a new ground of rejection² so that they can reopen the prosecution of this application pursuant to 37 CFR § 41.50(b) (1) (2004). See the Request for Rehearing in its entirety.

The appellants only argue that "the Board does not address Appellants' argument that the Examiner did not identify the motivation for modifying the method of the Schmitz patent with

¹ The appellants also do not challenge our determination that the suggestions provided in Widlund, Fletcher and Johansson are not inconsistent with the teachings already provided in Schmitz. Compare our decision, page 9, with the Request for Rehearing, pages 1-3.

² The appellants do not argue that the reasons set forth in our decision are materially different from those set forth in the Answer and therefore, our affirmance of the examiner's decision should be treated as a new ground of rejection. See the Request for Rehearing in its entirety.

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aspects of" other secondary references. See the Request for Rehearing in its entirety. However, in so arguing, they ignore the factual findings set forth in our decision identifying the teachings and suggestions provided in the primary reference, Schmitz, relied upon by the examiner, which would have led one of ordinary skill in the art to the subject matter defined by the separately argued claims on appeal. See our decision, pages 6-10. Inasmuch as the appellants do not assert that we misapprehended the teachings/suggestion provided in Schmitz or that our reliance on the teachings/suggestions in Schmitz constitutes a new ground or rejection, we cannot agree with the appellants that our decision contains any reversible error.

In view of the foregoing, the appellants' request for rehearing is granted to the extent of reconsidering our decision, but is denied with respect to making any change thereto.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REHEARING - DENIED

Edward Kimlin

EDWARD C. KIMLIN)
Administrative Patent Judge)

Chung K. Pak

CHUNG K. PAK)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES

Terry J. Owens

TERRY J. OWENS)
Administrative Patent Judge)

CKP:hh

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